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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion to Consider the Ratemaking and Other Implications of a Proposed Plan for Resolution of Voluntary Case filed by Pacific Gas and Electric Company Pursuant to Chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Corporation and Pacific Gas and Electric Company, Case No. 19-30088.

Investigation 19-09-016

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

**1. Background**

Pacific Gas and Electric Company (PG&E) and its holding company PG&E Corporation (PG&E Corp.) filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code on January 29, 2019. The Commission opened this Order Instituting Investigation (OII) on October 4, 2019, to provide for Commission regulatory review of issues relating to the bankruptcy, but particularly issues relating to the application of state law to the proposed plans of reorganization. Additional background information is provided in the OII. (*Id.* at 2-6.)

Responses to the OII were filed by PG&E on October 11, 2019, and on October 18, 2019 by the Alliance for Nuclear Responsibility (A4NR), Small Business Utility Advocates (SBUA), Wild Tree Foundation (Wild Tree), Center for Energy Efficiency and Renewable Technologies jointly with The Climate Center (CEERT/Climate Center), the Commission's Public Advocates Office (Cal Advocates), the Commission's Office of the Safety Advocate (OSA), American Wind Energy Association of California (AWEA), Coalition of California Utility Employees (CUE), Ad Hoc Committee of Senior Unsecured Noteholders of Pacific Gas and Electric Company (Ad Hoc Committee or AHC), Official Committee of Tort Claimants of Pacific Gas and Electric Company (Tort Claimants Committee or TCC), The Utility Reform Network (TURN), City and County of San Francisco jointly with City of San Jose (Cities), Silicon Valley Clean Energy Authority jointly with Peninsula Clean Energy Authority (SVCA/PCE), Energy Producers and Users Coalition (EPUC), The Indicated Shippers (Indicated Shippers), NextEra Energy Resources (Next Era), Marin Clean Energy, Official Committee of Unsecured Creditors of PG&E Corporation and Pacific Gas & Electric Company (Official Committee), and Sonoma Clean Power Authority (Sonoma Clean Power).

Plans of reorganization were provided in the responses of PG&E and AHC.<sup>1</sup> A prehearing conference (PHC) was held on October 23, 2019.

## **2. Issues: Organization and Preliminary**

The scope of this proceeding was addressed in the OII, the responses to the OII, and the discussion at the PHC, and based upon that record, the issues to be addressed in this proceeding have been determined. The current focus of this

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<sup>1</sup> AHC submitted a joint plan with the Official Committee of Tort Claimants (TCC) (TCC/AHC Plan).

proceeding is on the review of the two plans of reorganization filed in the Bankruptcy Court – the PG&E Plan and the TCC/AHC Plan (the Plans) – including other documents resolving PG&E’s insolvency proceeding that may be associated with each plan. The Commission will review the Plans for their consistency with state law (particularly Pub. Util. Code section 3292) and related issues. The Commission’s consideration will include financial and operational issues over both the short term and the longer term.

As discussed further in the “Schedule” section below, because of the current uncertainty relating to the total amount of allowed claims PG&E must satisfy through reorganization, and in order for the proceeding to remain on track to meet the June 30, 2020 deadline for Commission approvals necessary for PG&E to be eligible to participate in the new wildfire fund established pursuant to Assembly Bill 1054 (Ch. 79, States. 2019), the Commission will first consider non-financial issues, and will later consider financial issues when there may be greater certainty. Accordingly, the issues have been divided into non-financial and financial categories.

## **2.1. Pub. Util. Code Section 854**

One issue on which there was not consensus was on the applicability of Pub. Util. Code section 854 to the reorganization plans before the Commission. In their responses to the OII and at the PHC, parties made a number of arguments regarding the applicability of Section 854 to one or both of the Plans. Because the applicability of Section 854 may affect the scope of the Commission’s review of the Plans, this is a threshold or preliminary issue. While the parties have presented arguments in their responses and at the PHC, in order to ensure a more complete record, the parties will have an additional opportunity to address this issue.

Parties may file briefs no later than November 21, 2019<sup>2</sup> addressing the following issues relating to Section 854: 1) Is Commission approval of PG&E's Plan and/or the TCC/AHC Plan under section 854 necessary and appropriate, and why; 2) Pub. Util. Code Section 853(b) allows the Commission to exempt transactions from Section 854 – should the Commission exempt either or both Plans, and why; 3) If the Commission exempts either or both Plans from review under Section 854, are there criteria in Section 854 that should still be applied to either or both Plans, and why; and 4) Any other arguments relating to the applicability of Sections 854 and 853(b). Briefs on these issues should be no more than 20 pages.

The resolution of this issue will be set forth in a ruling to be issued prior to the date that testimony is due.

### **3. Issues: Non-Financial**

The following issues are identified as non-financial.

#### **3.1. Governance Structure: Safety**

Under Pub. Util. Code Section 3292(b)(1)(C), the Commission is to consider whether a reorganization plan's proposed corporate governance structure for PG&E is "...acceptable in light of the electrical corporation's safety history." Accordingly, parties should present testimony on whether each of the Plans' proposed corporate governance structure is acceptable in light of PG&E's safety history. In addition to considering past history, the Commission is interested in enhancing and maintaining safety in the future, so parties should also address how the proposed corporate governance structure would affect public safety on a going forward basis, both short term and long term.

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<sup>2</sup> Reply briefs are not permitted.

### **3.2. Governance Structure: Criminal Probation**

Under Pub. Util. Code Section 3292(b)(1)(C), the Commission is to consider whether a reorganization plan's proposed corporate governance structure for PG&E is acceptable in light of PG&E's criminal probation. The parties should address this issue, including how the criminal probation may relate to or impact the resolution of other issues.

### **3.3. Climate**

Under Pub. Util. Code Section 3292(b)(1)(D), the Commission must determine that a reorganization plan is consistent with the state's climate goals as required pursuant to the California Renewables Portfolio Standard Program and related procurement requirements of the state. Parties should address how the effects of each of the Plans are consistent with California's climate goals and related California procurement requirements.

### **3.4. Section 854 (Non-Financial)**

This is a placeholder for any non-financial issues to be addressed by this Commission pursuant to Section 854 or Section 853(b). Additional guidance to the parties will be provided in a separate ruling.

### **3.5. Other Non-Financial Issues**

Parties may address other relevant non-financial issues that the Commission should consider in relation to the Plans. Non-financial arguments relating to the public interest not otherwise addressed may be made here, including issues relating to potential effects on local communities and PG&E employees.

#### **4. Issues: Financial**

The following issues are identified as financial.

##### **4.1. Ratemaking**

The OII in this proceeding identified as an issue the ratemaking implications of any proposed plan of reorganization. (OII at 7.)

##### **4.2. Fines or Penalties**

The OII in this proceeding identified as an issue whether a proposed plan of reorganization provides satisfactory resolution of claims for monetary fines or penalties for PG&E's pre-petition conduct. (*Id.*)

##### **4.3. Governance Structure: Financial Condition**

Under Pub. Util. Code Section 3292(b)(1)(C), the Commission is to consider whether a reorganization plan's proposed corporate governance structure for PG&E is acceptable in light of PG&E's recent financial condition, along with the non-financial factors identified in Section 3, above.

##### **4.4. Neutral to Ratepayers**

Under Pub. Util. Code Section 3292(b)(1)(D), the Commission must determine that a reorganization plan is neutral, on average, to the ratepayers of PG&E.

##### **4.5. Ratepayer Contribution**

Under Pub. Util. Code Section 3292(b)(1)(E) the Commission must determine that a reorganization plan recognizes the contributions of ratepayers, if any, and compensates them accordingly through mechanisms approved by the Commission, which may include sharing of value appreciation.

##### **4.6. Section 854 (Financial)**

This is a placeholder for any financial issues to be addressed by this Commission pursuant to Section 854 or Section 853(b). Additional guidance to the parties will be provided in a separate ruling.

#### **4.7. Other Financial Issues**

Parties may address other relevant financial issues that the Commission should consider in relation to the Plans. Financial arguments relating to the public interest not otherwise addressed may be made here, including issues relating to potential effects on local communities and PG&E employees.

#### **5. Issues Outside the Scope**

The following issues raised by parties have been determined to be outside the scope of this proceeding:

##### **5.1. Hedging**

Pursuant to an Assigned Commissioner's Ruling issued on November 1, 2019, PG&E's request for approval of interest rate hedging is being addressed via a separate application.<sup>3</sup> Accordingly, that request is outside the scope of this proceeding, and will not be addressed here.

##### **5.2. Municipalization**

The City and County of San Francisco and the City of San Jose (Cities) request that the scope of this proceeding be expanded to include the issues scoped in I.15-08-019 (PG&E Safety Culture OII), particularly the issue whether part or all of PG&E should be reconstituted as a publicly-owned or municipal utility. (Cities Joint Response at 4.) The scope of the Safety Culture proceeding is much broader than the scope of this proceeding; however, as noted above, the current focus of this proceeding is on the review of the two plans of reorganization filed in the Bankruptcy Court and municipalization of all or part of PG&E is currently outside the scope of this proceeding.

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<sup>3</sup> Application 19-11-002.

## **6. Guidance for Testimony**

Parties shall use a common outline for their testimony. That outline is to follow the order and number of issues listed in sections 3 and 4 above. If a party has no testimony on one or more issues, the testimony should still include a numbered heading for each issue, with a notation of “No testimony on this issue,” so that the issue numbering remains consistent.

In responses to the OII, parties used a variety of names to refer to other parties and to the proposed plans of reorganization; in all testimony and future pleadings, parties are to use the names of parties and plans that are used in this Scoping Memo. If new parties or plans enter the proceeding, parties shall refer to them by the name used by the new party or the proponent of the new plan.

At the PHC, CEERT and Climate Center made a formal motion for consolidation of this proceeding with the Commission’s PG&E Safety Culture Investigation (I.)15-08-019. (Transcript v. PHC at 45-48.) There was discussion of CEERT’s motion, with parties both supporting and opposing the motion, and exploring alternatives, such as incorporating the record of that proceeding by reference in this proceeding. (*Id.* at 60, 77.) While some parties did want the proceedings consolidated, it appeared that the primary interest of the parties was in having things that are in the record of Investigation (I.) 15-08-019 available for citation in this proceeding.

Given the extraordinarily broad scope of the record in the Safety Culture OII, the motion of CEERT and Climate Center is denied, and the record of that proceeding will not be incorporated by reference in this proceeding. However, parties may identify and mark testimony offered in the Safety Culture proceeding as exhibits in this proceeding; admissibility of those exhibits in this proceeding will be determined at the time admission to the record is requested in



this proceeding. Parties may cite to comments or other pleadings filed in the Safety Culture proceeding, but must attach the cited pleading to the pleading being filed in this proceeding.

Given the expedited schedule for this proceeding, all responses to data requests or other discovery shall be provided electronically within five business days of the request. All responses to data requests or other discovery shall also be provided to the service list; for unusually voluminous responses, the service list may be electronically provided with a notice of availability with a link to the response.

## **7. Need for Evidentiary Hearing**

The OII preliminarily determined that evidentiary hearings are necessary. Neither the responses to the OII nor the discussion at the PHC support a different conclusion. Accordingly, this Scoping Memo determines that evidentiary hearings are needed.

## **8. Schedule**

In order to expeditiously address the threshold issue of the applicability of Pub. Util. Code Section 854 (as discussed above), the first step is to provide the parties an opportunity to brief that issue. Accordingly, concurrent briefs addressing the issue (as described above) are due on November 21, 2019.

Establishing a workable schedule for this proceeding is challenging. On the one hand, Senate Bill 1054 imposes a short deadline for PG&E to emerge from bankruptcy in order to take advantage of the Wildfire Fund, but because the wildfire claims estimation process is not complete, there will be a delay in determining the amount of allowed claims PG&E must satisfy through reorganization. As a result there is currently significant uncertainty around the financial elements of the reorganization plans.

Because of that uncertainty, some parties have suggested that the Commission start its review of the plans of reorganization with the non-financial issues, such as safety, climate change, and governance issues. (*See*, TURN, Transcript v. PHC at 97, Abrams, Transcript PHC at 108-110.) This approach makes sense, and is adopted, as these issues can be examined before there is an outcome of the estimation and Tubbs proceedings.

At the PHC, some parties recommended that the Commission hold frequent regularly-scheduled PHCs or status conferences in this proceeding, for case management purposes. We are not doing that at this time, but additional PHCs or status conferences may be held on relatively short notice.

If any updates to either reorganization plan are filed with the Bankruptcy Court, a corresponding update must also be filed with the Commission and served on the service list the same day as the update is filed in the Bankruptcy Court, accompanied by a description of any material changes made to the plan.

Accordingly, the following interim schedule is adopted:

Concurrent briefing on section 854 issues	November 21, 2019
Ruling on 854 issues	November 27, 2019
Opening Testimony on Non-Financial issues	December 13, 2019
Reply Testimony on Non-Financial issues	January 6, 2020
Evidentiary Hearing on Non-Financial issues	January 13-24, 2020
Opening Briefs on Non-Financial issues	January 31, 2020
Reply Briefs on Non-Financial issues	February 7, 2020
Proposed Decision on Non-Financial issues	TBD
Testimony on Financial issues	March 16, 2020
Evidentiary Hearing on Financial issues	March 18-20, 2020

Briefs on Financial issues	March 27, 2020
Proposed Decision on Financial issues	April, 2020

This schedule may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the proceeding.

The final schedule for this proceeding has not yet been established, but at this time we preliminarily determine that the proceeding will be resolved within 18 months, consistent with Pub. Util. Code § 1701.3.

#### **9. Category of Proceeding/*Ex Parte* Restrictions**

The Commission determined that this is a ratesetting proceeding. (OII at 8.) Accordingly, *ex parte* communications are subject to the restrictions and reporting requirements set forth in Article 8 of the Rules.

#### **10. Public Outreach**

Pursuant to Pub. Util. Code § 1711(a), the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website. In addition, the OII opening this proceeding was served on the service lists of 11 additional Commission proceedings relating to PG&E, its financial condition and safety record.

#### **11. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation no later than 30 days after the first prehearing conference, which was held on October 23, 2019.

## **12. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **13. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

## **14. Assignment of Proceeding**

Marybel Batjer is the assigned Commissioner and Peter V. Allen is the assigned ALJ and principal hearing officer for this proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. The category of this proceeding is ratesetting.

Dated November 14, 2019, at San Francisco, California.

/s/ MARYBEL BATJER

Marybel Batjer  
Assigned Commissioner